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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-15-0036
)	
PETITION TO CREATE A)	COMMENT
JUVENILE MECHANICAL)	
RESTRAINTS RULE, ARIZONA)	
RULES OF PROCEDURE FOR)	
THE JUVENILE COURT)	

David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully submits this comment, on behalf of the Juvenile Court Directors and Presiding Juvenile Court Judges, to inform the Court of the position of the juvenile court judges and juvenile court administrators regarding the proposed creation of a juvenile mechanical restraints rule, Supreme Court No. R-15-0036.

The Juvenile Justice Service Division (JJSD) met with the Juvenile Court Administrators at their quarterly meeting on April 7, 2016 to obtain their response to the above captioned petition. Additionally JJSD held a meeting with the Presiding Juvenile Court Judges on April 19, 2016 for the same purpose.

Juvenile Court Administrators

The Juvenile Court Administrators responded with concerns over the safety and security of the court room, children and staff. The first concern was ensuring there was a distinction between the court room and the court house. Directors strongly conveyed that the restraining of juveniles during transport to and from the court room (including in the court house) is necessary. Rural court directors expressed concern about maintaining order in the court room without staff to maintain adequate safety, security and control. Additionally court room design and logistics in rural counties present a variety of challenges to maintaining safety, security and control of unrestrained youth, including but not limited to: 1) the lack of holding rooms, 2) court room exits directly outside, 3) distance between court room and detention center. With the difficulties noted, there was support, albeit not unanimous, from the administrators for the idea of not restraining youth in the court room unless there is an elevated risk of physical harm to others or flight. In fact, several probation departments already have policies to that effect or are in the process of writing such policies. Tim Hardy, Director of Yuma County Juvenile Court, said that Yuma County has not adopted a no shackling policy but rather the custodial officer determines the necessity on a case by case basis.

Presiding Juvenile Court Judges

The Presiding Juvenile Court Judges were also asked to respond to the above captioned petition in a conference call meeting on April 19, 2016. There was support

for a portion of the rule petition. The judges were in favor of having a presumption of no restraints in the court room and suggested the following language from the above petition with slight modification:

Children shall be free of mechanical restraints when appearing in Superior Court, Juvenile Division, unless there are no less restrictive alternatives to mechanical restraints that will prevent flight or physical harm of another person, including, but not limited to, the presence of court personnel or law enforcement officers.

The Juvenile Court Judges were not in favor of holding hearings to determine the necessity of restraints in the court room. Rather they supported the idea of detention administration determining, in advance of transport, the necessity of restraints on a case by case basis. At any time during the transport to and from court the juvenile detention officers transporting the juvenile can determine to use restraints based upon the behavior of the juvenile. Judges also inquired about the need for statewide training for bailiffs and detention staff when securing a court room with unrestrained juveniles. Judges also suggested that youth who were considered a danger or flight risk may use video conferencing to attend hearings if available. Again, the distinction was made by the judges that the presumption of no restraints applied to the court room only; in the court house and transporting of minors, they viewed the use of restraints as appropriate.

The National Council of Juvenile and Family Court Judges (NCJFC) adopted a resolution regarding the shackling of children in juvenile court on July 25 2015 (Attached as Appendix B). In this resolution they support the advancement of a trauma-informed and developmentally appropriate approach to limiting the use of shackles. They support the presumption of no shackles (restraints) being used and that requests for exceptions to this rule should be made in court on an individualized basis. They believe the judge should have the ultimate authority to determine whether or not a child needs to be restrained in the court room.

It should be noted that at the present time, many of the presiding juvenile judges and juvenile court administrators in Arizona support the idea of presumptively not restraining and making exceptions on a case by case basis. However, there is not unanimous consent among all the juvenile administrators. Both the presiding juvenile judges and juvenile court administrators do not want to try and list all the criteria to be considered in a new court rule and would prefer to leave that up to local policy.

Detention Operations

In addition to the proposed amendments to Rule 12 (see Appendix A), amendments to the juvenile detention standards are in the final stages of modifications and will be provided to the Arizona Judicial Council for approval. The revised standards will contain an amendment noting that when youth are brought before the Superior Court, Juvenile Division, the presumption will be that the youth

will not be shackled unless detention administration determines it is the least restrictive measure available. Local detention policy will include provisions to meet this goal. As part of the operational review procedure by the Juvenile Justice Services Division of the Administrative Office of the Court, policy and practice will be monitored.

Conclusion

Therefore, based on the comments by the Juvenile Court Administration (judges and directors) the following amendments contained in Appendix A are recommended for consideration. We believe these amendments as well as the detention standards amendments described above will adequately address the concerns presented in the pending rule petition.

/s/
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Appendix A

APPENDIX A

Rule 12. Attendance of Juvenile at Proceedings

A. Personal Appearance. A juvenile accused of committing a delinquent or incorrigible act shall appear before the court for all proceedings as directed by the court. The juvenile shall personally appear before the court for the following:

1. Any adjudication hearing;
2. Any disposition hearing;
3. Any transfer hearing; and
4. Any change of plea.

B. Telephonic or Video Appearance. For purposes of these rules, the appearance by telephone or video conferencing of the juvenile shall be considered a personal appearance. The juvenile may appear telephonically or by video conferencing only as stipulated to by the parties and authorized by the court.

C. Voluntary Absence. The court may infer that the juvenile's absence is voluntary if the juvenile had notice of the date, time and place of hearing, the right to be present at the hearing and had received a warning that the hearing would go forward in the juvenile's absence if the juvenile failed to appear.

D. Failure to Appear. The failure of the juvenile to appear at the adjudication or any other hearing, except the disposition hearing, shall not prevent the court from proceeding in the juvenile's absence and/or issuing a warrant to secure the juvenile's attendance.

E. Mechanical Restraints.

1. Mechanical Restraints include handcuffs, leg irons, belly chains, zip ties, strait jackets and any device used to restrain movement of the arms, legs or torso.
2. A Juvenile shall be free of mechanical restraints when appearing in Superior Court, Juvenile Division, unless there are no less restrictive alternatives to mechanical restraints.
3. Exceptions shall be determined on an individualized basis by the detention administrator or designee or by the lead juvenile detention officer if risk of flight or harm elevates during transport. Exceptions must have a documented rationale of the demonstrated safety risk the child poses to themselves or others, the risk of flight, and the presence or absence of court personnel assigned to provide security. If a decision has been made that the use of mechanical restraints is necessary they shall be the least restrictive option necessary to maintain safety, security and control.
4. The court may determine whether to restrain any juvenile due to a threat to the safety, security or control of the court room.

Appendix B

APPENDIX B



RESOLUTION REGARDING SHACKLING

OF CHILDREN IN JUVENILE COURT

Whereas, the NCJFCJ defines shackles to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior; and

Whereas, shackling of children in court may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, attorneys, and other parties, and can limit the child's ability to engage in the court process; and

Whereas, research in social and developmental psychology suggests that shackling children interferes with healthy identity development; and

Whereas, placing children in shackles can be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; and

Whereas, placing children in shackles can negatively influence how a child behaves as well as how a child is perceived by others; and

Whereas, shackling promotes punishment and retribution over the rehabilitation and development of children under the court's jurisdiction; and

Whereas, shackling is contrary to the goals of juvenile justice, as defined in the **Juvenile Delinquency Guidelines** to implement a continuum of effective and least intrusive responses to reduce recidivism and develop competent and productive citizens; and

Whereas, continued attention and consistent judicial leadership is necessary to ensure that policies regarding shackling continue to be upheld regardless of changes in leadership or administration; and

Whereas, judges have the ability to advance and maintain policies and practices that limit the use of restraints or shackles.

BE IT THEREFORE RESOLVED AS FOLLOWS:

The NCJFCJ supports the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in court.

The NCJFCJ calls for judges to utilize their leadership position to convene security personnel and other justice system stakeholders to address shackling and to work together to identify ways to ensure the safety of children and other parties.

The NCJFCJ encourages judges and court systems to continually review policies and practices related to shackling children.

The NCJFCJ supports a presumptive rule or policy against shackling children; requests for exceptions should be made to the court on an individualized basis and must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others.

The NCJFCJ believes judges should have the ultimate authority to determine whether or not a child needs to be shackled in the courtroom.

Adopted by the NCJFCJ Board of Directors during their meeting July 25, 2015 in Austin, Texas.